

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
Comcast Cable Communications, Inc.)	CSB-A-0676
)	
Appeal of Local Rate Order of)	
the Township of Middletown, Pennsylvania)	
)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 7, 2003

Released: March 13, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Comcast Cable Communications, Inc. ("Comcast"), has filed an appeal of the local rate order adopted by the Township of Middletown, Pennsylvania (the "Township" or "Middletown") on May 14, 2002. For the reasons set forth herein, we grant the appeal.

II. BACKGROUND

2. Rate orders issued by franchising authorities may be appealed to the Commission pursuant to Commission rules.¹ In ruling on appeals of local rate orders, the Commission will not conduct a *de novo* review, but instead will sustain the franchising authority's decision as long as a reasonable basis for that decision exists.² The Commission will reverse a franchising authority's rate decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules.³ If the Commission reverses a franchising authority's decision, it will not substitute its own decision, but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.⁴

3. In the rate filing in this case, FCC Forms 1205 and 1240 are at issue. FCC Form 1205 is the form operators use to update and adjust regulated cable equipment and installation rates. Operators using the annual rate adjustment method submit their rate justifications on FCC Form 1240. These rate

¹ See 47 C.F.R. § 76.944; 47 U.S.C. § 543(b)(5)(B).

² *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5731-32 (1993) ("*Rate Order*"); 9 FCC Rcd 4316, 4346 (1994) ("*Third Reconsideration Order*").

³ *Id.*

⁴ *Id.*

adjustments reflect inflation, changes in the number of regulated channels offered, and changes in certain external costs. External costs include the following categories of costs: state and local taxes specifically applicable to the provision of cable television service; franchise fees; costs of complying with franchise requirements; retransmission consent fees and copyright fees incurred for the carriage of broadcast signals; other programming costs; and Commission regulatory fees.⁵

III. DISCUSSION

A. Summary of Appeal Petition

4. In its appeal petition, Comcast states that the Township reviewed Comcast's Forms 1240 and 1205 (the "2002 Rate Filing"), which were submitted on March 1, 2002, and disapproved Comcast's basic service tier ("BST") maximum permitted rate ("MPR") because the Commission released its annual inflation adjustment factor approximately six weeks after Comcast submitted its 2002 Rate Filing to the Township.⁶ Comcast asserts that the Township's rate order is irreconcilable with the Commission's rules and policies governing local franchising authority review of BST rates because Comcast used the correct inflation factors to prepare its 2002 Rate Filing.⁷ It states that the Commission's rules, as well as FCC Form 1240, establish that local franchising authorities ("LFAs") are prohibited from retroactively revising inflation factors under these circumstances.⁸ Moreover, Comcast points out that the instructions on FCC Form 1240 specify that where the "true-up"⁹ period includes months for which the Commission has not released an inflation figure, the operator must use the figure from the most recent period for which inflation is available.¹⁰ In addition, Comcast indicates that the Commission has held that LFAs may not find a rate unreasonable solely because more current inflation data has become available by the time the franchising authority reviews a cable operator's rate submission.¹¹ Comcast argues that its BST rate is justified by data that was accurate at the time Comcast submitted its 2002 Rate Filing to the Township on March 1, 2002, and that the Commission's rules and precedents prohibit the Township from revising the inflation factors reflected on Comcast's 2002 Rate Filing with data the Commission did not publish until April 9, 2002.¹²

⁵ 47 C.F.R. § 76.922(c) and (f).

⁶ Appeal Petition at 1.

⁷ *Id.* at 3.

⁸ *Id.*

⁹ As part of the annual rate change, the Commission's rules include a "true-up" mechanism which permits an operator to correct projected cost changes with actual cost changes associated with external costs, inflation, and the number of regulated channels. The true-up requires operators to decrease their rates or permits them to increase their rates to adjust for over-or-under estimations of these cost changes. *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration*, 11 FCC Rcd 388, 420-21 (1995).

¹⁰ Appeal Petition at 3.

¹¹ *Id.*

¹² *Id.* at 4.

5. Comcast makes the additional argument that the Township provided no opportunity for Comcast to present its view regarding the Township's Order prior to the Order's release.¹³ It asserts that the Township violated Section 76.935 of the Commission's rules because the Township neither sought information from Comcast regarding its rate filing nor provided Comcast with a draft rate order or report on which the Township intended to base its decision.¹⁴

B. Refreshing Trued-up Inflation Calculation.

6. Operators using Form 1240 may adjust rates once per year to reflect reasonable, certain, and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the 12 months following the rate change.¹⁵ An operator using Form 1240 "true-ups" the inflation information on the rate form by using the quarterly or annual inflation figures published by the Commission.¹⁶ If the true-up on the worksheet includes months for which the Commission has not released an inflation figure, the operator must use the figure for the most recent period for which a figure is available.¹⁷ The operator then computes an average inflation factor for the true-up period, which is used in calculating the maximum permitted rate for the true-up period.¹⁸ The inflation factor most recently released by the Commission is also used to compute the current inflation factor for the projected period.¹⁹ A franchising authority should not find a rate unreasonable solely because more current inflation data has become available by the time the franchising authority reviews a cable operator's submission.²⁰ However, if a rate is unreasonable on its face or has to be adjusted for reasons other than the availability of a more current inflation figure, the franchising authority may recalculate the MPR using the most accurate inflation information for the period at issue that is available at the time of its review.²¹ The Township has not shown that Comcast's MPR is unreasonable on its face or that the rate has to be adjusted for any other reason. Thus, the Township should accept the Form 1240 and the data Comcast submitted and Comcast should not be required to refresh its inflation factor.

7. With regard to Comcast's assertion that the Township violated Section 76.935 by providing no opportunity for Comcast to present its views regarding the Township's Order prior to the Order's release, the Commission's rules do require that an LFA have procedural laws or regulations applicable to rate regulation proceedings that provide a reasonable opportunity for consideration of views of interested parties.²² However, our rules do not require an LFA to prepare a draft order for review by

¹³ *Id.* at 4-5.

¹⁴ *Id.* at 4.

¹⁵ 47 C.F.R. § 76.922(e)(3).

¹⁶ See *Comcast Cablevision of Detroit, Inc.*, 15 FCC Rcd 24022, 24027 (CSB 2000) citing Form 1240 Instruction at 13, 24-25.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² 47 C.F.R. § 76.935.

the operator prior to release of a final order, as suggested by Comcast. Further, the record does not provide enough information to permit a ruling on the adequacy of the Township's procedures with respect to the requirements of Section 76.935 generally.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the Appeal of Comcast Cable Communications, Inc. from a Rate Order of the Township of Middletown, Pennsylvania **IS GRANTED** to the extent indicated herein and the Rate Order of the Township of Middletown, Pennsylvania **IS REMANDED** for further consideration consistent with this Memorandum Opinion and Order.

9. This action is taken pursuant to authority delegated by § 0.283 of the Commission's rules. 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

John B. Norton
Deputy Chief, Policy Division
Media Bureau